THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.7305 of 1995

Dated 06-03-2006

Between:

S.Thyagarajan.

..... PETITIONER

AND

M/s. Hindustan Cables Ltd, rep. by its Chief General Manager, Hyderabad & another.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.7305 of 1995

O R D E R:

Petitioner, a security guard in the respondent-Company, was placed under suspension and was charge sheeted, vide proceedings dated 05-12-1993, alleging that he had stolen a brass blank cap. The petitioner submitted his explanation on 09-12-1993 denying the charges. An enquiry officer was appointed to conduct an enquiry, which was held during the period 23-12-1993 to
05-01-1994. The petitioner was removed from service vide proceedings dated 05-

08-1994.

While several contentions are raised regarding the validity of the order of removal from service, Sri P.Prabhakar, learned counsel for the petitioner, would emphasize the fact that after the departmental enquiry was conducted and prior to imposition of the punishment, a copy of the enquiry report was not furnished to the petitioner nor was he given an opportunity to submit his objections thereto. This averment is found in paragraph 8 of the affidavit and it is the case of the petitioner that even on the date on which the writ petition was filed, a copy of the enquiry report was not furnished to him.

No counter affidavit is filed on behalf of the respondents.

Since the punishment has been imposed after 20-11-1990, the law laid down by the Apex Court in **Union of India v. Mohd. Ramzan Khan** and **Managing Director, ECIL, v. B.karunakar**, wherein the requirements of furnishing a copy of enquiry report prior to imposition of punishment and in affording an opportunity to the delinquent employee to submit his objections thereto was held to form part of rules of natural justice, would apply to the present case.

While dealing with the question as to the consequences of failure to furnish a copy of the enquiry report, the Supreme Court in **B.karunakar** held thus.

"The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to a "unnatural expansion of natural justice" which in itself is antithetical to justice.

Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court! Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court., Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should nut mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/ Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Courts/ Tribunals find that the furnishing of the report would have made a: difference to the result in the case that should set aside the order of punishment Where after following the above procedure the Courts/Tribunals sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority, management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

The law laid down in **B.karunakar** (2 supra) requires the Court to cause a copy of the report to be made available to the aggrieved employee if he has not already secured it before coming to the Court and to give him an opportunity to show how his or her case was prejudiced because of the non-supply of the enquiry report. Since no counter affidavit is filed by the respondents in the present case nor is there any representation on behalf of the respondents when the case was called, it is not possible for this Court to cause a copy of the enquiry report to be furnished to the petitioner. The writ petition relates to the year 1995 and since more than 11 years elapsed since then, the only order which is appropriate, in the facts and circumstances of the case, is to set aside the order of punishment, direct the

respondents to have a copy of the enquiry report furnished to the petitioner, give him an opportunity to file his objections thereto and show how his case was prejudiced because of the non-supply of the enquiry report and thereafter take a decision in accordance with law.

The writ petition is accordingly disposed of. No order as to costs.

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06-03-2006

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